

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LESLIE MICHELLE GARCIA,

Civil Action File No.

Plaintiff,

v.

WAL-MART STORES EAST, LP (DELAWARE),  
WALMART INC. AND MATTHEW BUTT,

Defendants.

---

**NOTICE OF REMOVAL**

COME NOW WAL-MART STORES EAST, LP, WALMART INC. and MATTHEW BUTT (erroneously named), named Defendants in the above-captioned matter, by and through their counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendants WAL-MART STORES EAST, LP, WALMART INC. and MATTHEW BUTT in the State Court of Gwinnett County, Georgia, which is within the Atlanta Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 21-C-07935-S5. Plaintiff's claims against Defendants include claims of negligence.

2.

Plaintiff filed the Complaint on or about November 5, 2021. Defendants WAL-MART STORES EAST, LP and WALMART INC. received service of summons and a copy of the Complaint on November 9, 2021. Defendant MATTHEW BUTT allegedly received service of summons and a copy of the Complaint on November 15, 2021. Defendants WAL-MART STORES EAST, LP, WALMART INC. and MATTHEW BUTT file this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant WAL-MART STORES EAST, LP is a Delaware limited partnership, of which WSE Management, LLC is the only general partner, and WSE Investment, LLC is the only limited partner. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC, and the sole member of Wal-Mart Stores East, LLC is Walmart Inc. Walmart Inc. is a Delaware corporation with its principal place of business in the State of Arkansas, and it was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of this lawsuit or at any time thereafter. The principal place of business for all entities mentioned in this paragraph is 708

SW 8th Street, Bentonville, AR 72716.

4.

Defendant WALMART Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant WALMART INC. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for WALMART INC. is 708 SW 8th Street, Bentonville, AR 72716.

5.

Plaintiff's complaint also names as a DEFENDANT MATTHEW BUTT, who is alleged to be a resident of Georgia, and is further alleged to have been employed by Wal-Mart Stores East, LP as the "store manager" and "responsible for management" of the Store. (See Complaint paragraphs 4, 6, 11). However, MATTHEW BUTT was not the Store Manager of the subject store at the time of Plaintiff's alleged slip and fall. (See Declaration of Matthew Butt at ¶ 4, attached as Exhibit "A").

6.

The citizenship of MATTHEW BUTT should be disregarded for purposes of determining jurisdiction under 28 U.S.C. § 1441 because Plaintiff has no

possibility of recovery against him and, therefore, he has been fraudulently joined solely for the purpose of defeating federal diversity jurisdiction. See, e.g., Illinois Cent R.R. v. Sheegog, 215 U.S. 308 (1909); Tapscott v. MS Dealer Services Corp., 77 F.3d 1353 (11<sup>th</sup> Cir. 1996).

7.

Although the complaint attempts to lump DEFENDANT BUTT into the category of “Defendants,” the factual allegations of the complaint, which form the foundation for all the Plaintiffs’ claims, do not contain a single allegation of any specific or general wrongful conduct on the part of MATTHEW BUTT as to which he could be found liable.

8.

Defendants further show that DEFENDANT MATTHEW BUTT was not an owner or operator of the subject premises, and did not undertake sole and complete control and management of the subject premises. Plaintiff was not an invitee, licensee or trespasser of DEFENDANT MATTHEW BUTT. DEFENDANT MATTHEW BUTT did not owe or breach any independent duty to Plaintiff. (See Declaration of Matthew Butt , ¶¶ 11-20, attached as Exhibit “A”).

9.

Removal is appropriate because Plaintiff has “no real intention to get a joint judgment, and . . .there [is] no colorable ground for so claiming.” AIDS Counseling and Testing Centers v. Group W. Television, 903 F.2d 1000, 1003 (4<sup>th</sup> Cir. 1990). As demonstrated by the lack of allegations in the complaint directed solely toward MATTHEW BUTT, it is evident that no viable claim for relief can be stated against the non-diverse Defendant, and his joinder is a sham which should be disregarded.

10.

Leslie Michelle Garcia is a citizen of the State of Georgia.

11.

Complete diversity of citizenship exists between Plaintiff and Defendants.

12.

Plaintiff claims severe injuries to her left knee, left shin, bilateral shoulders, neck, left foot, hips and has headaches, serious, painful and permanent bodily injuries, pain and suffering, past medical expenses in excess of \$60,815.30, and future medical expenses (see Complaint paragraphs 14, 24, 25, 26 and 27). The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

13.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendants.

14.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendants have attached as Exhibit “B” copies of all the pleadings that were provided to and served upon Defendants, including copies of all pleadings that have been filed to date in the State Court of Gwinnett County, Georgia for the above-styled case.

15.

Pursuant to 28 U.S.C. § 1446, Defendants are not required to file a removal bond.

16.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

17.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Gwinnett County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendants WAL-MART STORES EAST, LP, WALMART INC. and MATTHEW BUTT pray that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb  
Nicholas E. Deeb  
Georgia Bar No. 117025  
Attorneys for Defendants  
WAL-MART STORES EAST, LP  
WALMART INC.  
MATTHEW BUTT

3445 Peachtree Road, N.E.  
Suite 500  
Atlanta GA 30326  
(404) 365-4535  
(404) 364-3138 (fax)  
ndeeb@mmatllaw.com

The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Nicholas E. Deeb  
Nicholas E. Deeb

**CERTIFICATE OF SERVICE**

This is to certify that on December 8, 2021, I electronically filed a NOTICE OF REMOVAL with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb  
Nicholas E. Deeb  
Georgia Bar No. 117025  
Attorneys for Defendants  
WAL-MART STORES EAST, LP  
WALMART INC.  
MATTHEW BUTT

3445 Peachtree Road, N.E.  
Suite 500  
Atlanta GA 30326  
(404) 365-4535  
(404) 364-3138 (fax)  
ndeeb@mmatllaw.com